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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE-OPELOUSAS DIVISION

United States of America

Criminal Action No. 6:96-CR-60040-01

versus

Judge Tucker L. Melançon

Allen B. Richardson

Magistrate Judge Tynes

**MEMORANDUM ORDER**

Before the Court is a Motion to Eliminate Enhancements and Reduce Sentence filed by defendant Allen Richardson [Rec. Doc. 121].

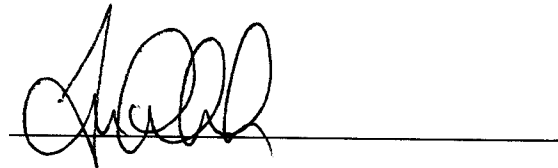
The defendant bases his motion upon *United States v. Booker*, 543 U.S. 220 (2005), which held that a petitioner's Sixth Amendment rights were violated by imposing sentencing enhancements based on the sentencing judge's determination of facts that were not found by a jury beyond a reasonable doubt, nor admitted by the petitioner. As such, Defendant moves the Court to reconsider his sentence, which was imposed on April 29, 1997.

In *United States v. Gentry*, 2005 WL 3317891 (5<sup>th</sup> Cir. 2005), the Fifth Circuit held that the rules of law promulgated by *Booker* do not apply retroactively. *See also In Re Elwood*, 408 F.3d 211 (5<sup>th</sup> Cir. 2005). The Court explained that *Booker* created a new rule of criminal procedure, since the decision only re-allocated decision making authority and did not affect the lawfulness of the underlying conduct. Thus,

*Teague v. Lane*, 489 U.S. 288 (1989) applies, which held that new constitutional rules of criminal procedure are not applicable to those cases which become final before the new rules are announced. Since Defendant's sentence was imposed and his conviction confirmed prior to the Supreme Court's *Booker* ruling, the new procedural rights do not apply and Defendant is not entitled to a collateral review of his sentence. Accordingly, it is

ORDERED that Defendant's Motion to Eliminate Enhancements and Reduce Sentence [Rec. Doc. 121] is hereby DENIED.

THUS DONE AND SIGNED this 13<sup>th</sup> day of January, 2006, at Lafayette, Louisiana.



Tucker L. Melançon

United States District Judge

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